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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA

4 v.

13 CR 345 (LGS)

5 ANTIONE CHAMBERS,

6 Defendant.

7 -----x

8 New York, N.Y.
9 October 6, 2014
9:30 a.m.

10 Before:

11 HON. LORNA G. SCHOFIELD,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
17 Southern District of New York

SANTOSH ARAVIND

NEGAR TEKEEI

18 Assistant United States Attorneys

19 JOSHUA L. DRATEL

WHITNEY SCHLIMBACH

20 Attorneys for Defendant

21 ALSO PRESENT: JOHN REYNOLDS, FBI

JENNIFER HANSMA, Paralegal AUSA

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1 (Trial resumed; jury not present)

2 THE COURT: I think we are just waiting for jurors.

3 (Jury present)

4 THE COURT: Good morning, ladies and gentlemen.

5 Welcome back. Thank you for coming this morning. All we are
6 doing now is sending you back to begin your deliberations
7 again. All of the instructions I gave you before still stand.
8 I won't repeat any of them. Good luck to you. Thank you.

9 (Jury deliberations resumed; time noted: 9:53 a.m.)

10 THE COURT: If you leave the courtroom, please make
11 sure that Mr. Street has a way of reaching you quickly.

12 (Recess pending verdict)

13 THE COURT: I have a note from the jury with a request
14 and I will have it marked as a court exhibit.

15 Let me read it first and then we can talk about it.
16 It reads: Is it possible to provide identification of certain
17 phone numbers in contact with Brown's cell phone before and
18 after the robbery. 917-795-5941, 646-242-2813, 917-207 --
19 sorry. I just realized Mr. Chambers is not here. Do you want
20 to get him.

21 MR. DRATEL: It may take us --

22 THE COURT: You don't have any objection to my
23 continuing with a note in his absence?

24 MR. DRATEL: Correct.

25 THE COURT: The second number was 646-242-2813. The

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1 third number is 917-207-9548, and the fourth and last number is
2 646-242-2161.

3 I'll continue reading the note. It says: See Exhibit
4 5001 between 23:29:41 on March 24 and 2:58:45 on March 25.
5 Also, Exhibit 200 and 201. We would like the time stamps from
6 the video surveillance.

7 Let me ask the government, which is probably most
8 likely to know the phone numbers by heart, are people
9 associated with these phone numbers in evidence?

10 MR. ARAVIND: We are checking right now, your Honor.

11 THE COURT: Thank you.

12 MR. ARAVIND: Your Honor, quite frankly, I think we
13 need to look at the transcript and see whether those phone
14 numbers have been referenced at all during the testimony of
15 Special Agent Reynolds. I don't know the answer to that.
16 There were a number of phone numbers at issue at the trial.
17 Certainly, there were numbers that were listed in the phone
18 records during that time that were not discussed at all during
19 the testimony of Special Agent Reynolds. I am not sure quite,
20 frankly, whether these are the numbers. We had have to look at
21 the transcript and do a search and see if we can find what the
22 numbers reflect.

23 THE COURT: Do you have an efficient way to do that?

24 MR. ARAVIND: We do. The transcripts are PDF
25 searchable. We can quickly make that search and report back to

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1 the Court hopefully in the next half an hour. As for the time
2 stamps, there were references to Special Agent Reynolds'
3 testimony as to when he reviewed the video surveillance and saw
4 a particular time stamp, and I'm not sure if that's exactly
5 what the jury is asking for. But we could certainly make those
6 time stamps available to the jury.

7 THE COURT: Mr. Dratel.

8 MR. DRATEL: We can look in the transcript for the
9 numbers.

10 The time stamps, I am not sure how to respond to that
11 in the sense of they didn't ask for specific testimony. I just
12 have -- I am not sure --

13 THE COURT: They are asking for time stamps from the
14 video surveillance and we saw from two separate cameras video
15 of Brown's apartment with time stamps. Perhaps the better
16 thing to do, if it's possible and not too inefficient, is to
17 have counsel look at the video, agree on the time when various
18 things happen, and then we can report that back to the jury.
19 Does that sound okay?

20 MR. DRATEL: It may be in the record, your Honor.

21 THE COURT: If you can find it in the record and agree
22 on it, that would be fine.

23 MR. ARAVIND: Your Honor, one option, and we would
24 have to check with our tech people, I think in other cases we
25 have provided the jury with a laptop that's blank. Those

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1 exhibits are on CD and are on compact disk. We can just give
2 them a copy of the surveillance video for their own review.

3 THE COURT: At the moment they have just asked for the
4 time stamps. So maybe the thing to do is see if you can get
5 the time stamps out of the transcript. That's probably faster
6 than trying to put the video on a laptop and get it back there.
7 And then go from there. If you want, in the meantime, to put
8 the video on a laptop in case it's needed, feel free to do
9 that.

10 What I think I will do is adjourn and let counsel go
11 through the transcript and agree on the answers to these
12 questions. Let me know when you have the answers. And then
13 I'll come back. I think my preference would be to put it on a
14 piece of paper. My law clerk or I can type it up and just send
15 it back there rather than have them all come out here and tell
16 them and march them all back in.

17 (Recess pending verdict)

18 THE COURT: So where do we stand?

19 MR. ARAVIND: Your Honor, with respect to the four
20 numbers referenced in the jury note, there is one reference to
21 the 5941 number. All the other three numbers are not
22 referenced in the trial transcript, although they are included
23 in that summary exhibit that is referenced in the jury note.

24 There is no specific testimony trying to identify that
25 particular phone number, but we would just ask that the Court

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1 read back the testimony referencing that number, the 594.

2 THE COURT: What does it say?

3 MR. ARAVIND: Starting --

4 THE COURT: And I don't have a copy of the transcript,
5 so I will need to borrow yours if the way to handle it is to
6 bring the jury out. Sounds as if I do. What day is that?

7 MR. ARAVIND: The 2nd, John Reynolds' testimony. It's
8 568. Starting at line 16 it says: Again, looking at that last
9 call that's highlighted -- again, that's the outgoing call from
10 Brown to the 6130 Twizzie phone -- you notice, similar to the
11 video frame, there is a gap in activity. So that last call is
12 at 1:05 a.m. The phone -- I should say the phone's next
13 outgoing activity is approximately 1:35.

14 "Q. Let's look --

15 "A. I'm sorry. If I may correct that, the next outbound
16 activity looks like it's 1:32.

17 "Q. That's the 9696 Brown iPhone calling some number at 5941?

18 "A. Yes.

19 "Q. That would be a text message?

20 "A. Yes."

21 That's the reference to the 5941 number.

22 Your Honor, the 646-242 number, there was testimony
23 that that number is the Sprint routing number that the Court
24 had some questions about during the testimony of Special Agent
25 Reynolds. There is no specific testimony about those

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1 particular phone numbers being Sprint routing numbers, but
2 there was testimony about the 646-242-2813. And so we would
3 ask that the Court read, if it is inclined to do some
4 read-back, relating to the Sprint routing numbers. That would
5 be at page 567, the preceding page, Special Agent Reynolds'
6 testimony at lines 3 through 12 and then at 18 through 21.

7 THE COURT: Page 567, tell me the lines again.

8 MR. ARAVIND: 3 through 12 and then 18 through 21.

9 Those are the phone issues, the government's responses
10 to the phone inquiries by the jury.

11 We also have now gone through the video
12 surveillance --

13 THE COURT: Just one second. I'm looking on page 567.
14 The reference is to a different 646 phone number. And you want
15 me to read this to them so that they will infer that this is
16 also a Sprint routing number. Is that basically it?

17 MR. ARAVIND: I think that that's consistent, that the
18 Sprint routing number in evidence was that 646-242. There are
19 different numbers associated with different phone calls. And
20 so that's our belief is that that is a Sprint routing number.
21 And when you look at the actual duration of the call, it's
22 consistent with that being a Sprint routing number.

23 THE COURT: Thank you. And that's your position with
24 respect to the fourth phone number in the list as well?

25 MR. ARAVIND: Correct.

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1 THE COURT: Mr. Dratel.

2 MR. DRATEL: With respect to the phone numbers, I
3 think we are in agreement on the video surveillance.

4 THE COURT: We are not there. What is your position
5 on the phone numbers?

6 MR. DRATEL: I don't think the transcript citation on
7 568-69 answers the jury's question. I don't see why that would
8 have to be read. They asked for identification of phone
9 numbers. There is no identification of that 5941 number,
10 regardless of what the testimony says.

11 The 646-242 numbers are not identified. I don't think
12 we should make inferences. They asked specific questions and
13 the answer is, there is no specific identification of the
14 people associated with those phone numbers.

15 THE COURT: I tend to agree with you on the 5941
16 number, but I don't agree with you with respect to the 646
17 numbers. I wouldn't do anything except read this to them and
18 say with regard to the 646 numbers.

19 MR. DRATEL: That's sort of telling them that they
20 should infer that these numbers are the same --

21 THE COURT: They can infer it if they want to. They
22 obviously want to know something about these numbers. We have
23 nothing to tell them about 5941. There is nothing in the
24 transcript that tells them anything about it. But with respect
25 to the 646 numbers --

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1 MR. DRATEL: Then the other one, obviously, there is
2 nothing there.

3 THE COURT: You are not talking into the mic.

4 MR. DRATEL: I'm sorry. The 9548 number, there is
5 nothing --

6 THE COURT: Right.

7 MR. ARAVIND: Your Honor, there is another reference
8 to another one of these Sprint routing numbers on page 569,
9 lines 16 through 20. The routing number here is 646-242-2863
10 and that's referenced at line 18 on page 569.

11 THE COURT: I think that testimony is confusing on
12 page 569.

13 What can you tell me about the video?

14 MS. TEKEEI: Your Honor, we reviewed the video and we
15 also did so with Mr. Dratel. We have typed up the time stamps
16 and a general summary of what occurs at each of the time stamps
17 on the video. Our paralegal, Ms. Hansma, is attempting to
18 e-mail that document now. But I can also show the typed-up
19 version to your Honor's law clerk on my phone, if that makes it
20 easier for a quicker turnaround. Mr. Dratel has seen it and
21 has agreed to the time stamps and the general summaries that
22 are provided.

23 THE COURT: Okay.

24 Here is something I'm wondering. I'm wondering if
25 with regard to the 646 numbers and the testimony on page 567,

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1 can we make a copy of page 567. Do we have a digital version
2 of this transcript?

3 MR. DRATEL: I could probably get one for the Court.

4 MR. ARAVIND: As can we.

5 THE COURT: If someone can e-mail me October 2, page
6 567.

7 MR. ARAVIND: Typically, your Honor, the government,
8 since we have the transcript, we are happy to provide that. I
9 can give you the page I have right now, if the Court wants to
10 make copies.

11 THE COURT: The thing is, the copy machine is on the
12 second floor or. We are on the 11th floor. It's faster if the
13 e-mail will work more quickly. But thank you.

14 If you should send it to the chambers e-mail, we
15 should get it in here. Actually, where was Ms. Hansma sending
16 the e-mail?

17 MS. TEKEEI: She just e-mailed it. We are forwarding
18 it to you, your Honor.

19 THE COURT: Ms. Farber, I am going to ask counsel what
20 they think of this language, but perhaps you can take it down
21 at the same time.

22 My thought is to send a note back to the jury that
23 says: With regard to the telephone numbers, there is nothing
24 in the transcript that specifically references any of these
25 numbers. With regard to the 646 numbers, you may or may not

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1 find helpful the transcript on page 567 of Special Agent
2 Reynolds' testimony, which is attached. And then a new
3 paragraph that says: With regard to the time stamps, please
4 see the additional page attached.

5 Mr. Aravind, did you want to give up your one page for
6 all time, on the theory that you could reprint it? And then
7 there is Ms. Hansma probably with the same thing.

8 MR. ARAVIND: She didn't get the e-mail. But she has
9 the time stamp language.

10 THE COURT: Is that language acceptable to everyone,
11 subject to Mr. Dratel's objection to any reference to page 567?

12 MR. ARAVIND: Your Honor, from the government's
13 perspective I think the reference to nothing in the record
14 referencing the 5941 --

15 THE COURT: Let's say there is nothing in the record
16 that identifies --

17 MR. ARAVIND: The user of the 5941 number. I think --

18 THE COURT: Let's just say that identifies those
19 numbers because I am not sure we are really identifying users,
20 in any event. So we will just say nothing that identifies.

21 Mr. Dratel, just so you know, on the copy of page 567
22 that I've been handed, there is a little hashmark next to line
23 3, line 12, line 18, and line 21.

24 Do you have any objection to that? I think it's just
25 basically pointing out where the starts and stops are, but they

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1 will have the whole page.

2 MR. DRATEL: We have a clean one, actually.

3 THE COURT: You want to swap?

4 MR. DRATEL: Sure.

5 MS. TEKEEI: Your Honor, we also just e-mailed our raw
6 version of the transcript from Thursday to the chambers e-mail
7 address so you have it as well.

8 THE COURT: Great. Thank you.

9 Counsel, the jury note has been marked as Exhibit 2.
10 So we will mark this three-page response as Court's Exhibit 2A.
11 I am going to sign Judge Schofield to the cover note to the
12 jury.

13 MR. ARAVIND: Your Honor, I noticed that the version
14 that Mr. Dratel handed up to you was highlighted in some way.

15 THE COURT: Let's not do that.

16 MR. DRATEL: 568 is highlighted.

17 THE COURT: Thank you for seeing that. Let's reprint
18 567.

19 We are adjourned again.

20 (Recess pending verdict)

21 THE COURT: I have another request from the jury and
22 this one I'll mark as Court Exhibit 3. It reads: Please
23 provide the transcript of Emma Torruella leading up to and
24 including her recanting of the identification of the defendant.

25 What I propose to send back is the Torruella redirect

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1 beginning on page 211, which is where the identification
2 questions start on redirect. And it goes through 2015. And so
3 what I would do is just print those pages and send it back.

4 MR. ARAVIND: Your Honor, can you read back the note.

5 THE COURT: Sure. Please provide the transcript of
6 Emma Torruella leading up to and including her recanting of the
7 identification of the defendant.

8 MR. ARAVIND: Your Honor, I don't see that as limited
9 to the redirect examination. I think it would be the entirety
10 of her testimony, which starts at page 134 and then goes until
11 215, 216. It doesn't say anything about identification.

12 THE COURT: It says leading up to and including, and I
13 assume they would have said please provide the transcript of
14 her testimony if they had wanted all of it. I don't have a
15 problem if both of you want me to send all of it back. But it
16 just means that we would have go back and redact all of the
17 side bars.

18 Let me find out what Mr. Dratel wants to do.

19 MR. DRATEL: I think it's pretty clear that the Court
20 interpreted it correctly and if they want more, they know how
21 to ask for more.

22 THE COURT: That's what I am going to do. I am going
23 to send those pages back. So from 211 to --

24 MR. ARAVIND: Your Honor, just to complete the
25 argument, I really do think that had the jury specifically said

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1 we would ask for the redirect examination, they would have done
2 so. They asked for her testimony leading up to and including
3 the recanting. I take that as meaning her entirety of her
4 testimony from the direct, cross, and then redirect. And to
5 respond appropriately to the jury's question, I think we need
6 to include the entirety of her testimony.

7 THE COURT: I will change my ruling only because it's
8 also true that if they only want to see the last five pages,
9 they can just read the last five pages. It just means a little
10 bit of time in getting them the testimony.

11 Here is a question. What is logistically the easiest
12 way to do the redactions?

13 MR. ARAVIND: The way I've done this in the past, your
14 Honor, we would go back to our office. We can redact things on
15 the computer. We would redact out just when there is an
16 objection that is sustained, and we would redact out the
17 question and the answer, and we would redact out the side bars.

18 THE COURT: Here is another way we can do this as a
19 compromise. We can send back the four pages, we can say we are
20 preparing the rest of the transcript for you. It may take some
21 time. And when it's done we will send it back to you. Or we
22 could ask them.

23 Mr. Dratel?

24 MR. DRATEL: The latter, which is to say, to the
25 extent there is any ambiguity. Do you mean just that part of

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1 the redirect in which the recantation occurred or do you mean
2 the entirety of her testimony?

3 THE COURT: Why don't we do this. Why don't we send a
4 note back that says: Do you want all of her testimony or some
5 part? And if you want some part, can you please be more
6 specific. For example, do you want all of her redirect -- they
7 won't know what redirect is.

8 MR. ARAVIND: They might know what redirect is, given
9 they have seen this --

10 THE COURT: We have said it now for five days. We can
11 just say, do you want all of her testimony, do you want all of
12 her redirect, or do you want some other portion?

13 MR. ARAVIND: I think that makes sense.

14 MR. DRATEL: Your Honor, rethinking this, if they
15 wanted all of her testimony, they would have said all of her
16 testimony.

17 THE COURT: There is no harm in asking.

18 MR. DRATEL: Leading up to means --

19 THE COURT: I understand.

20 MR. DRATEL: Your Honor, I think in terms of when they
21 say leading up, I think that's what the Court should ask them,
22 what do you mean by leading up to? How much do you want?

23 THE COURT: Here is what I propose. Members of the
24 jury, in response to your second question: "Please provide the
25 transcript of Emma Torruella leading up to and including her

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1 recanting of the identification of the defendant. We are
2 unclear what you mean by 'leading up to.' Would you like the
3 entire transcript of her testimony, just Mr. Aravind's
4 questioning on redirect, or some other portion?"

5 MR. ARAVIND: That's fine, your Honor.

6 THE COURT: Is that all right, Mr. Dratel?

7 MR. DRATEL: I would just ask them what they mean by
8 leading up to. That's all.

9 THE COURT: I like my question better, so I'll send it
10 in.

11 MR. DRATEL: Thank you, your Honor.

12 THE COURT: I'll mark the question as Court Exhibit 3.
13 I'll mark our question back as Court Exhibit 3A. And I'll ask
14 the marshal to wait for the response.

15 MR. DRATEL: Your Honor, may I step out just for a
16 moment?

17 THE COURT: Sure.

18 (Pause)

19 THE COURT: They want the entire transcript. So what
20 I suggest is that you work with Mr. Street and discuss the
21 redactions together at the same time so we don't have one
22 version and then have objections and then have to revise it
23 again. I will leave you to that and I'll come back when you
24 are done. Thank you.

25 (Recess pending verdict)

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1 THE COURT: Where are we?

2 MR. ARAVIND: Your Honor, this may take a little bit
3 longer because Mr. Dratel and I are in disagreement as to what
4 portions of the transcript should be redacted. In every single
5 trial I've ever been a part of, the part that gets redacted, if
6 there is an objection that's sustained, the question and the
7 answer ends up getting redacted.

8 Mr. Dratel has taken the position that certain
9 questions he asked where there was an objection and I rephrased
10 the question that that portion should be redacted, which we do
11 not agree. It does not make sense to have those as redacted
12 since there has not been an objection sustained.

13 THE COURT: I'll hear from Mr. Dratel.

14 MR. DRATEL: Some of them are objection overruled, not
15 rephrase. I think some of the rephrase we kept in.

16 THE COURT: Objection overruled stays in. We all
17 agree on that?

18 MR. DRATEL: There is one about coconspirator
19 statements and I think some of that has to come out. I
20 actually don't necessarily share that with respect to what
21 comes in or out. I thought all extraneous comments --

22 THE COURT: I'm sorry. I couldn't hear your last
23 sentence.

24 MR. DRATEL: That all extraneous comments come out.
25 More importantly, there are some that are more substantive than

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1 others. There is at least one that has some substance to it in
2 terms of the discussion of coconspirator statement.

3 THE COURT: There was an objection and it was a
4 presumably a hearsay objection, and then there Mr. Aravind said
5 something like, it's a statement of coconspirators and then it
6 was overruled.

7 MR. DRATEL: But let me just go to the ones that make
8 a difference because there aren't that many. Not as
9 complicated.

10 THE COURT: It would be helpful if I could see them.

11 MR. DRATEL: Page 157, lines 19 through 22.

12 THE COURT: You want that in or out?

13 MR. DRATEL: That I want out.

14 THE COURT: Do you care?

15 MR. ARAVIND: I don't care. But I think the
16 government takes the position, we are trying to do as
17 expeditiously as possible with the fewest redactions as
18 possible. The fact that Mr. Dratel is making an objection that
19 the Court says, I understand, but it's after the testimony, not
20 before, in essence, overruling the objection, I don't think we
21 should be making redactions for that. This process is going to
22 take a lot longer.

23 THE COURT: Let me ask this. Mr. Dratel, how many of
24 these are there?

25 MR. DRATEL: There is like one or two more. We are

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1 taking a longer time arguing --

2 THE COURT: Let me hear what the one or two more are
3 and then I'll rule.

4 MR. DRATEL: Page 165. The government agrees that the
5 paragraph beginning at line 13 has to come out because there
6 was an objection that was sustained. Then there is a
7 disagreement as to the bottom of the colloquy, bottom of the
8 page, the colloquy between the Court and the witness. I
9 believe that the witness was answering the Court with respect
10 to the specific part between lines 13 and 16 that was
11 sustained, and I believe that that's corroborated by the top of
12 166 with the Court's answer which is basically that --

13 THE COURT: Let me just read this so I remember where
14 we are.

15 With respect to this one we all agree that it gets
16 stricken from line 13 to 21 through line 6 on the next page.

17 MR. DRATEL: That was my position, your Honor.

18 THE COURT: For this one I would strike line 13
19 through line 6 on the next page because I think it's all part
20 of the same testimony that's being struck.

21 MR. DRATEL: And the other one is at 181, your Honor,
22 line 18. I don't think the government would take this out at
23 all, but I say between line 18 on 181 through line 9 on 182.
24 I'm sorry. Through line 1 on 182. The Court's instruction to
25 the jury should stay.

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1 THE COURT: I would take out lines 19 through line 1
2 on the next page.

3 MR. DRATEL: Make it 18, your Honor, my objection.

4 THE COURT: Okay. 18.

5 MR. ARAVIND: Your Honor, our position is that since
6 the objection was overruled, that all should come in.

7 THE COURT: I hate to reverse my decision, but I agree
8 with the government, so I'll allow it in.

9 MR. DRATEL: Your Honor, it's a discussion of a legal
10 ruling about a coconspirator statement.

11 THE COURT: I know. It happened in court. They heard
12 it. There was nothing struck. I'm not going to strike it.
13 157, I am going to leave that as well.

14 So the redaction is on 165 into 166. Is that clear?

15 MR. ARAVIND: Then we agreed upon redactions. We can
16 print up copies and bring them to court, if that's okay. We
17 will bring a set for the defense, two sets for the Court, and a
18 set to give to the jury. Is that amenable?

19 THE COURT: Okay. It might even be faster if you want
20 to e-mail my copy. I don't need a hard copy. I can look at it
21 electronically. I don't know if Mr. Dratel wants a paper copy.

22 MR. DRATEL: If we are not going to read it,
23 electronic copy is fine.

24 THE COURT: Just a hard copy for the jury.

25 MR. ARAVIND: Thank you, Judge.

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1 (Recess pending verdict)

2 THE COURT: I reviewed the redacted transcript, which
3 is Government Exhibit 3B. I understand that the parties agreed
4 on the redactions, subject to the objections we have put on the
5 record previously, and we have sent Exhibit 3B, which is the
6 redacted transcript, back to the jury.

7 Is there anything else we should put on the record?

8 MR. ARAVIND: I think you mentioned Government Exhibit
9 3B. It should be Court Exhibit 3B.

10 THE COURT: I misspoke. Court Exhibit 3B.

11 Anything else? We are adjourned.

12 (Recess pending verdict)

13 THE COURT: So I have another request. It says:
14 Please provide the testimony of Demi Torres.

15 We will have to redact everything that has to be
16 redacted and send back whatever is left.

17 I will leave it to you in the first instance to figure
18 out what that is. Thank you.

19 (Recess pending verdict)

20 THE COURT: Counsel, I should say that I will mark the
21 last note requesting the testimony of Demi Torres as Court
22 Exhibit 4.

23 Did you agree on redactions?

24 MR. ARAVIND: There are a set of redactions that the
25 parties have agreed to, and then there were some additional

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1 redactions that Mr. Dratel wants.

2 I'm happy to go through with the Court the ones we
3 have agreed to or we could talk about just about the disputed
4 ones.

5 THE COURT: Let's talk about the ones that you
6 disagree about. Let me get the transcript.

7 MR. ARAVIND: It's October 1.

8 THE COURT: In the meantime, I also received a note,
9 Court Exhibit 5, asking for Government Exhibits 160B, C and G.
10 I would have thought they were in the notebook.

11 MR. ARAVIND: The CD contains Government Exhibit 160.
12 Inside are the files which are electronic. We can certainly
13 print them out. It may take some time to do that.

14 THE COURT: Can we give them a laptop?

15 MR. ARAVIND: We can give them a laptop. I have made
16 arrangements with our IT department so that we could get one.

17 THE COURT: A laptop with the CD, which would actually
18 be Exhibit 160?

19 MR. ARAVIND: 160 is the actual CD containing all the
20 phone records in evidence. There are then subfolders within
21 that that are the actual phone records.

22 THE COURT: Mr. Dratel, I have the transcript from
23 October 1.

24 MR. DRATEL: Just to preface, all the redactions are
25 based on the fact that the Court's striking of Ms. Torres'

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1 testimony. I just think we need to protect the meaning of
2 that; in other words, not let things leak to the jury so they
3 take it in some way that they use other information for the
4 same purpose. I think it's just so incredibly important.

5 THE COURT: Let's look at something concrete.

6 MR. DRATEL: 465, line 24 through 466, line 2. 466,
7 line 14 through 466, line 18.

8 THE COURT: I have 465 running over to 466. What's
9 the second one?

10 MR. DRATEL: 466, line 14 through 466, line 18. Then
11 467, line 11 through 468, line 1.

12 THE COURT: Let me just read this a second.

13 MR. DRATEL: 469, line 2 through line 18. 470, line 4
14 through 470, line 19.

15 THE COURT: Give me just a minute. Through line 19?

16 MR. DRATEL: Yes. 476, line 19 through 477, line 2.
17 And then 498, line 8 through line 13.

18 That's the ones that I have, your Honor, in addition
19 to the ones Mr. Aravind listed.

20 THE COURT: Now that I have looked at them, if you can
21 just tell me the first page number of each of them.

22 MR. DRATEL: 465, 466, 467 through 468, but then the
23 next one is 469. Then 470, 476 through 77. And then 498.

24 THE COURT: I'll hear your argument and then I'll hear
25 the government's argument.

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1 MR. DRATEL: It's somewhat of the proverbial 800-pound
2 gorilla in the sense of her identification because really there
3 is nothing else contested about her testimony. There is really
4 nothing that would be of relevance in deciding these issues.

5 So I'm very concerned that there may be bits and
6 pieces that the jury will use to seize on something that is the
7 identification without basis, essentially, is what the Court
8 has found. I was trying to sanitize it to the point where it
9 eliminated all of that. Even from cross-examination I took out
10 anything that I thought would suggest somehow that she had an
11 adequate opportunity or all those things that go to ID,
12 regardless of just the ID itself. I was really looking to take
13 all that out. Frankly, I would take all of her testimony out.
14 I don't know what difference it makes in the context of this
15 case at this point because nothing else is disputed.

16 THE COURT: I'll hear from the government.

17 MR. ARAVIND: Your Honor, Mr. Dratel just said it. He
18 means to eviscerate Ms. Torres' testimony and make her not
19 exist as a witness in this trial. We certainly believe apart
20 from the Court's ruling regarding the identification testimony,
21 she is a very significant witness. She corroborates much of
22 the testimony of Ms. Torruella. They go to the very heart of
23 these issues, that there was a robbery and the events of March
24 25. I think we really need to look at the testimony one by
25 one, and I ask that the Court indulge me in that regard.

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1 So the first proposed redaction from the defense is on
2 465. The answer: The guy wasn't really looking at me, but I
3 told her who it was again and she told me it was Groovy's
4 friend and I let her in. Again, that is relevant because it
5 provides the narrative for what happens that night. It
6 provides that she let Ms. Torruella in with another man who she
7 didn't know. That statement does not go to the identification
8 of the defendant.

9 The second proposed redaction at 466 talks about where
10 was the man that was in the room? Where was he standing and
11 what was the lighting like? Again, those are critical issues
12 for the trial in terms of corroborating Ms. Torruella's
13 testimony and explaining that this was a robbery. The fact
14 that the individual was standing near the table and where the
15 light was I think are important issues that, again, do not go
16 specifically to the identification of the defendant, which we
17 have redacted out after conferring with Mr. Dratel.

18 Proposed redaction number 3 at 467, again, talks about
19 where the individual was, where he was standing, what he was
20 wearing, and how long she looked at him and the fact that he
21 kept looking away from him.

22 Your Honor, part of the issues at trial is the fear
23 that the victims faced, Ms. Torres testifying that the man kept
24 on looking away from her, I think, shows that this was a
25 robbery and a kidnapping. It corroborates Ms. Torruella's fear

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1 and his outfit, not the fact of who he is as a person, but his
2 outfit is important because it also corroborates the testimony.

3 One of the issues, of course, the Court is aware of is
4 the lack of DNA evidence. The fact that Ms. Torres sees an
5 individual with black gloves corroborates the testimony and
6 shows why there is a lack of DNA evidence in this case.

7 THE COURT: Give me just a minute on that one.

8 MR. ARAVIND: Turning to page 469, your Honor, the
9 question there by Ms. Tekeei is about the person in the room,
10 his demeanor. Ms. Torres answers a little nervous, I kept on
11 looking at him. He said nothing and he just kept waiting.
12 Again, those go to the same issues that the government has been
13 talking about, corroborating Ms. Torruella's testimony and
14 explaining to the jury that this is, in fact, a robbery and a
15 kidnapping. And the same thing with the end of that. It does
16 not go to the identification of this witness. It just
17 explains.

18 THE COURT: Are 16 through 18 disputed?

19 MR. ARAVIND: We were not planning to redact 16
20 through 18.

21 THE COURT: So it's only line 2 through line 15.

22 MR. ARAVIND: I don't know if Mr. Dratel has an issue.

23 MR. DRATEL: Where?

24 THE COURT: On page 469, Mr. Dratel wanted to exclude.

25 MR. DRATEL: From 11 -- wrong page. From 2 through

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1 18.

2 THE COURT: And what about 16 through 18? Let me just
3 ask Mr. Dratel, what about 16 through 18?

4 MR. DRATEL: It says that the defendant, that man, the
5 defendant.

6 MR. ARAVIND: Those two words I think the government
7 would redact.

8 MR. DRATEL: I think the whole thing should go in
9 blank there. Who knows what they are going to think. They are
10 going to think it's his name. It can't be that that is so
11 important to this case that that should jeopardize what the
12 Court has already done. There is nothing that they said that I
13 wouldn't stipulate to. There was a robbery. They were all
14 afraid. This is a backdoor way of getting in ID. What was the
15 lighting? How did you see him, all these things? They are all
16 about ID. That's the only reason it could possibly be relevant
17 at this point.

18 THE COURT: The jury may legitimately want to know
19 what it is they are supposed to disregard. And what I ruled
20 was, they are supposed to disregard identification evidence and
21 not anything else, whether or not it's disputed. And so what
22 I'm trying to do here is figure out what relates to
23 identification and what does not.

24 MR. DRATEL: All I'm saying, your Honor, is that the
25 points that the government thinks they need it in for are

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1 illusory. There is no dispute --

2 THE COURT: I understand that. But that's not really
3 the issue.

4 MR. DRATEL: I think it is in this sense. I think it
5 is the issue in the sense that if there is a balance that it
6 has an implication for ID and it has some completely de minimus
7 value for the government. I don't think it has that value.
8 But if it has de minimus value versus it can implicate the ID
9 testimony, it has to go out. That's our position.

10 THE COURT: I understand.

11 Let's move to 470.

12 MR. ARAVIND: 470, your Honor, I think, again, this is
13 more about the narrative of what Ms. Torres does. It does not
14 go to the identification of the defendant. She says that she
15 thought she recognized him. She went on social media. And
16 then she spoke with officers that day.

17 The fact that she spoke with officers I think is
18 important because it goes to the fact that a crime had been
19 committed and the officers were responding to the scene and
20 conducting interviews, as they had been in the same way with
21 Ms. Torruella and Mr. Barea. Again, this is not about
22 statements relating to this defendant. It talks about what Ms.
23 Torres was doing at the time.

24 MR. DRATEL: She went on social media. If that's not
25 wrapped up in the ID, I don't know what is in the context of

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1 what has been telegraphed to the jury. It's only going to
2 remind them of the other testimony. They are going to be
3 confused. There is nothing about the robbery that is relevant
4 to that social media, and it is only relevant to the ID.

5 THE COURT: I agree with that. Let's move on to 476.

6 MR. ARAVIND: 476, your Honor, again, it's talking
7 about the distance of where she was compared to the person in
8 the room, whether it was inside the apartment. Again, I think
9 that is significant because it's just the narrative of what is
10 happening to this individual as she was observing things in the
11 apartment. Her view about what the person in the room was
12 wearing is a critical issue at trial. Her view about what her
13 mother was doing during that whole encounter is a critical
14 issue at trial. Her view about what the person in the room,
15 how he was acting and the fact that he was not looking at her
16 is a critical issue at this trial.

17 And I understand Mr. Dratel's desire to protect the
18 record, given this Court's ruling, which we cannot disagree
19 with. But at the same time I think it is his desire to
20 sanitize. He is really just trying to provide the jury with a
21 completely redacted-out transcript of Ms. Torres' testimony,
22 and we think that is not fair and that's not consistent with
23 this jury note.

24 THE COURT: I understand.

25 MR. DRATEL: Your Honor, there is nothing about

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1 Mr. Chambers that was connected to any article of clothing.
2 What that second person was wearing that night is irrelevant to
3 this testimony. The only reason it becomes relevant is to try
4 to bolster and backdoor the ability of an ID that the Court has
5 excluded. That is the only basis. I don't think they
6 mentioned it their summation this is so important. This
7 stuff --

8 THE COURT: 498.

9 MR. ARAVIND: 498 is a reference to another person, a
10 third person, asking Ms. Torres whether there was a third
11 person in the room. If you remember from Ms. Torruella's
12 testimony, she thought that the third person, the light-eyed
13 person or the light-skinned person was waiting outside the
14 apartment. That is precisely what Ms. Torres is saying. She
15 is confronted with that third person. She says, no, there was
16 no third person.

17 THE COURT: I'll tell you my rulings.

18 MR. DRATEL: Judge, may I respond to the last one.
19 Your Honor, I asked that question solely in relation to ID. My
20 only cross-examination of Ms. Torres was about ID. So that was
21 related to ID.

22 THE COURT: I have to look at what is the language of
23 the question, not what was in your head, Mr. Dratel.

24 Let me tell you, first of all, my rationale and then I
25 will tell you my rulings.

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1 When I made the ruling I ruled to exclude all of the
2 evidence that relates to identification. There are several
3 pieces of this, many pieces of this that relate to
4 identification. And I will not allow those portions of the
5 testimony.

6 There are portions, however, that do not relate to
7 identification in my mind and, therefore, I will -- I may have
8 misspoken and got that backward. In any event, I will exclude
9 anything that relates to identification and I will allow
10 anything that does not. Let me go through each one and tell
11 you what my rulings are.

12 With respect to page 465, lines 24 onto page 466, line
13 3, I will allow that.

14 On page 466, relating to where the man was standing, I
15 will allow lines 14 through 16. But with regard to the
16 lighting I will not allow it. So I will redact 17 and 18.

17 On 467, line 11 through 468, line 1, I will allow
18 lines 11 through 13, that he was standing by the dining room
19 table in the living room, but I will exclude everything else,
20 meaning from line 14 running over to line 1 on 468.

21 On 469, from line 2 to line 18, I will exclude from
22 line 2 to line 15. Actually, I will exclude from line 2 to
23 line 18 because I think redacting the defendant is sort of too
24 obvious a redaction and is improper.

25 On 470, from line 4 through line 19, I will exclude

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1 from line 4 to line 12, and I will allow line 13 to line 19.

2 476, running over to 477, I will exclude.

3 498 I will allow.

4 MR. ARAVIND: I'm sorry. I missed that one.

5 THE COURT: I will allow what's on 498 to come in.

6 Is there a way to make the redactions right now?

7 MR. ARAVIND: Yes.

8 THE COURT: Mr. Dratel is standing. Let me just ask
9 him what his question is.

10 MR. DRATEL: Just about the Court reiterating its
11 instruction to the jury about the limits of her testimony, in a
12 very emphatic way so we don't have any leakage with respect to
13 that.

14 THE COURT: I think what I will do is that when we
15 send the transcript back, I will say that the redactions are
16 made consistent with my ruling, striking any testimony relating
17 to identification.

18 Mr. Street, if you could just type up a note that says
19 that that I can send back with it.

20 MR. DRATEL: Your Honor, I think you should also add
21 that they could not consider any of this testimony relevant to
22 identification. They cannot use anything in there --

23 THE COURT: I agree with that.

24 Mr. Street, if you could just draft something for me
25 and I'll look at it and revise it if appropriate.

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1 MR. ARAVIND: Your Honor, I think 467, 19 through 21,
2 which is the description of what the individual was wearing, we
3 do want that in.

4 THE COURT: I thought I left in the line with the
5 gloves.

6 MR. ARAVIND: No.

7 THE COURT: 467, my ruling was to exclude 22 through
8 1. It leaves in 11 through 21.

9 MR. DRATEL: Your Honor, there is also the part about
10 how far away.

11 THE COURT: I'll leave it in just to show that she
12 could see that he was wearing a black skully and black bubble
13 jacket, gloves, and black jeans.

14 MR. DRATEL: We object to that.

15 Line 21.

16 THE COURT: 467, I was excluding from line 22 over to
17 line 1 of the next page.

18 MR. DRATEL: You're including all of that?

19 THE COURT: I'm sorry. Hang on a second. So what I
20 was allowing is from 11 to 21, and then I'm excluding from 22
21 on.

22 MR. DRATEL: To 2. Thank you, your Honor.

23 THE COURT: Any other questions?

24 MR. ARAVIND: No, your Honor.

25 THE COURT: While you work on that let me just look at

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1 the instruction.

2 The note that I proposed sending will say: Members of
3 the jury, attached is the transcript of testimony of witness
4 Demi Torres. The redactions were made to reflect the Court's
5 ruling, striking all of the identification testimony of Ms.
6 Torres. You may not consider any of her testimony, including
7 what is unredacted, for the issue of identification.

8 MR. DRATEL: Thank you, your Honor.

9 THE COURT: My plan is to mark that note and the
10 transcript together as 4A, and is request is Court Exhibit 4.

11 Could I ask the government, how do we get from here to
12 a printed copy of the transcript?

13 MS. TEKEEI: Your Honor, we will have to go back to
14 our office since we don't have Internet here.

15 THE COURT: You can e-mail it to us once you have
16 agreed on the redactions with Mr. Dratel, and we could copy it
17 upstairs and just have it walked down.

18 MS. TEKEEI: Sure. We don't have Internet here to do
19 that.

20 THE COURT: You don't have Internet so you can't
21 e-mail it to us.

22 MS. TEKEEI: We can e-mail it as soon as we cross the
23 bridge and get it over here, and we will also follow up on the
24 laptop for the viewing of --

25 THE COURT: I'll ask Mr. Street to ask the CSO or the

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1 marshal, whoever is back here, to find out how late they want
2 to sit.

3 The jury wants to leave now. So I think what we will
4 do is bring them out here, excuse them, and then in the
5 fullness of time you can print that and get the laptop and
6 everything else we need. And I think what I'll do is, I'll
7 tell them to be here and ready to go at 9:30 tomorrow morning,
8 if that works for counsel.

9 MR. ARAVIND: Thank you, Judge.

10 MR. DRATEL: Thank you, your Honor.

11 (Jury present)

12 THE COURT: Ladies and gentlemen, we are working on
13 your last two requests. We should have them ready for you by
14 the time you get here in the morning. Thank you for your long
15 day of service.

16 I am going to ask that you be here by 9:30 tomorrow
17 morning and ready to go, just so we get a little more time.

18 See you tomorrow morning. Don't talk about the case
19 with anyone. Thank you.

20 (Jury excused)

21 THE COURT: So if counsel could be here a little
22 before 9:30 so that you can agree on the redactions consistent
23 with my rulings so when we bring them out we can actually send
24 them back with everything.

25 MR. DRATEL: If the government could please e-mail it

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1 to me tonight, I can look it over.

2 THE COURT: That will avoid anybody having to come too
3 early. Thank you.

4 Have a good evening.

5 (Adjourned to Tuesday, October 7, 2014, at 9:30 a.m.)
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